IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.M. No.29066-M of 2007

Date of Decision: 10.7.2007

Rajiv Kumar

....Petitioner.

Versus

State of Punjab and others.

...Respondents.

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Present:- Mr.Mukul Aggarwal, Advocate
for the petitioner.

S.S.SARON, J.(ORAL)

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This petition under Section 482 Cr.P.C. has been filed for issuing directions to respondents No.1 to 4 for registration of an appropriate FIR against respondents No.5 to 7.

It is the case set up by the petitioner that one Kishore Chand son of Baghu Ram alias Bhagwan executed a General Power of Attorney dated 13.8.1963 (Annexure P1). The said Kishore Chand died on 20.3.1972. A copy of the death certificate has been placed on record as Annexure P2. It is alleged that respondent No.5 to 7 in order to illegally grab the land measuring 7 kanals 3 marlas situated at Village Penchanwali, got executed the sale deed dated 7.3.1988 (Annxure P3) in favour of Nand Lal respondent No.7 on the basis of General Power of Attorney dated 13.8.1963 (Annexure P1). In the said sale deed (Annexure P3) it has been mentioned by Wazir Chand, General Attorney that the executant of the General Power of Attorney (Annexure P1) i.e. Kishore Chand was still alive. Therefore, it

is alleged that on account of the death of Kishore Chand on 20.3.1972 a forged sale deed has been executed. It is submitted that the petitioner in respect of the allegations submitted an application dated 11.3.2007 (Annexure P7) to the SHO, Fazilka (respondent No.4). However, no action has been taken. Another application dated 9.4.2007 (Annexure P8) has also been submitted to the Superintendent of Police Ferozepur (respondent No.2). On that also it is submitted that no action has been taken. Learned counsel contends that in view of the judgment of the Supreme Court in Ramesh Kumari Vs. State (NCT) of Delhi, 2006 (2) RCR (Criminal)169, the allegations as made by the petitioner disclose a cognizable offence and therefore, it is mandatory under Section 154 Cr.P.C. for the police to register FIR. In the alternative, it is prayed that the petitioner may be relegated to the remedy of filing complaint in the court of concerned Magistrate.

I have given my thoughtful consideration to the contentions of learned counsel for the petitioner and also perused the record. The death certificate (Annexure P/2) of Kishore Chand, as placed on record shows that the columns relating to father's name and permanent address have been left blank. Therefore, from the material as placed on record it cannot be said that Kishore Chand is the same person who died on 20.3.1972 and in respect of whom the power of attorney (Annexure P1) relates. Therefore, there are disputed questions of facts involved which would require leading of evidence. The death certificate shows that death of Kishore Chand as mentioned in the certificate (Annexure P2) had occurred on 20.3.1972 but the certificate itself has been issued on 16.4.2004. This Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. is not to go into the

veracity of facts on the basis of which the petitioner seeks the initiation of criminal proceeding and ascertain as to whether the allegations as made in the complaint would warrant the initiation of criminal proceedings. That is the function of the trial Magistrate and this Court is not to reduce itself to that of a trial Court. In the circumstances it would be appropriate if the petitioner in order to establish his case approaches the concerned Magistrate having jurisdiction to take cognizance of the offence by filing a complaint in terms of Section 190 read with Section 200 Cr.P.C. The concerned Magistrate is required to enquire into the complaint in accordance with the provisions provided under Chapter XV Cr.P.C. It can also order investigation of the case under the provisions of Chapter XII Cr.P.C and ask for a report. In case in the opinion of the Magistrate no ground is made out for proceeding with the case, the complaint is liable to be dismissed in terms of Section 203 Cr.P.C.

In the facts and circumstances no ground is made out for issuance of directions by this Court for registration of FIR.

Consequently, the criminal miscellaneous petition is dismissed. The petitioner may, if so advised, seek alternative remedies.

(S.S.SARON)
JUDGE

July 10, 2007.
Reema